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THE REVIEW

INTERNATIONAL COMMISSION OF JURISTS

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Human Rights in the World

East Timor and Self-Determination

Since December 1975, the United Nations General Assembly has passed numerous resolutions on East Timor, asserting the right of the people to self-determination and demanding that they be enabled freely to determine their future under UN auspices. Indonesia, on the other hand, claims that the integration of East Timor with Indonesia was the result of an act of self-determination by the representatives of the people. As is frequently the case in such disputes, the historical facts are complex.

East Timor, previously known as Portuguese Timor, is situated at the south-eastern extremity of the sprawling Indonesian archipelago. The people are predominantly Malay or Malanesian in origin with some African, Arab and Chinese influences. The most widely spoken language in the territory if Tetum. Until 1975, it was a colony of Portugal for more than four hundred years.

East Timor's population, approximately 650,000 in 1974, is largely rural. It is economically backward and in the colonial period was heavily dependent on imports and subsidies from Portugal. The majority of the population depend on subsistence farming. Socially, the territory is characterised by the survival of traditional groupings, loyalties and beliefs. Although Catholicism had made some impact and Islam had a few adherents, the local animist beliefs of the people remain the dominant religion.

Prior to the April 1974 coup in Portugal, the political system in East Timor reflected the character of the Portuguese dictatorship. It was considered a province of Portugal under the Organic Law of Portuguese Overseas Territories of 1953. Under Portuguese rule the territory was divided into thirteen administrative divisions, called *Concelhos* or Councils with populations ranging from 25,000 to 84,000. The administration of the *Concelhos* was headed by the *administrator do concelho*, a Portuguese official whose powers were very extensive and varied. Each *Concelho* was further divided into *postos* or sub-districts, administered by an *administrator do posto*. By 1974, there were some 58 *postos* and 60% of their administrators were Timorese. These Timorese became politically active in the territory after the April 1974 coup in Portugal.

The coup brought to power the Armed Forces Movement (MFA) whose objectives were to establish democracy in Portugal and withdrawal from Portugal's colonies. In June of the same year, the new régime in Portugal spelt out three options for the Timorese people. They were: continued association with the metropolitan power, independence, or integration with Indonesia. Interestingly, it was Portugal that offered integration with Indonesia as one of the options, when Indonesia had stated on previous occasions that it had no territorial

claims to Portuguese Timor.

Within a few weeks of the coup in Portugal, political groupings emerged in East Timor. The three main political parties that emerged at first represented the three options offered by the Portuguese government. They were the Timorese Democratic Union or UDT, the Association of Timorese Social Democrats or ASDT, which later became the Revolutionary Front of Independent East Timor (Fretilin), and the Timorese Popular Democratic Association of Apodeti.

The UDT started as a party strongly in favour of continued association with Portugal but later changed its position to federation with Portugal as an intermediary step before achieving complete independence. The ASDT or Fretilin advocated the 'right to independence and the rejection of colonialism and countermeasures against neocolonialism'. Though initially the leaders of ASDT envisaged a lengthy time frame for the process of decolonisation, their position changed in September 1974 when ASDT became Fretilin and the leaders demanded an immediate declaration from the Portuguese authorities that they would grant independence to East Timor. The Apodeti, claiming that there were close ethnic and cultural links between the people of East Timor and Indonesia, advocated integration with Indonesia. In contrast with the other two parties, Apodeti never gained large support, but it became a focal point for Indonesian interests in relation to East Timor.

In January 1975, the two main parties, UDT and Fretilin, agreed to form a coalition. On 7 May of the same year the first phase of talks on decolonisation took place between the Portuguese authorities and a joint delegation of UDT and Fretilin members. At the talks Fretilin objected to the inclusion of Apodeti in the future talks to be held in Macau, arguing that a pro-integration party advocating 'recolonisation' should not be allowed to play a rôle in decolonisation talks.

Fretilin's impatience, combined with its interests in radical agrarian and educational reforms, alienated the UDT which unilaterally withdrew from the coalition at the end of May.

Fretilin boycotted the talks that took place in Macau between 26 and 28 June since Apodeti was a participant. After the conference, the Portuguese government proclaimed a constitutional law based on the conference text agreed to by UDT and Apodeti. The new law provided for a three-year interim period before the termination of Portugal sovereignty. It also provided for the setting up of a High Commissioner's Council, comprising a High Commissioner and five Joint Secretaries, two of them to be nominated by Portugal and the other three to come from UDT, Fretilin and Apodeti respectively. There was also to be a consultative government council consisting of two representatives nominated by each of the regional councils. In addition, each of the three political parties was to nominate four members to the government council. The new law stated that elections would be held in October 1976, envisaging the end of Portuguese sovereignty two years later.

It is well-known that in many decolonisation situations opposing political interests have found it difficult to arrive at a consensus and East Timor was no exception. But the political crisis in Portugal, particularly shifts in the ideological position within the MFA, aggravated the rifts within the parties in East Timor. For example, after the abortive right-wing coup by forces under the leadership of General Spinola, the suspicion of the UDT Leaders increased that the MFA officers were conspiring to place Fretilin in the leading decolonisation rôle at the expense of the UDT.

This state of flux was effectively used by Indonesia to create further tension among the parties. The Indonesian newspapers frequently alleged Chinese and Vietnamese involvement in Timor, saying, in particular, that the members of Fretilin were receiving military training from Vietnamese officers who had entered East Timor clandestinely. These reports created fears among the conservative section of the population.

The state of tension and mistrust between the parties culminated in a coup by the UDT. On 11 August 1975, members of the UDT attacked and seized key installations and gained control of the capital, Dili. This was followed by an outbreak of violence between members of UDT and Fretilin. Already, by 20 August the territory was in the midst of a civil war. On 26 August, the Portuguese governor and his staff left Dili for Atuaro, an island 30 miles north of Dili. On 11 October, Fretilin announced that it was in full control of the territory and had established a transitional administration. However, this was countered by the Indonesian government saying that pro-Indonesian forces had control of large areas of the territory and predicting that by the end of October they would regain control of the whole of it.

Meanwhile, the then Australian Prime Minister, Mr. Gough Whitlam, ruled out any military or political rôle for Australia in East Timor, stating that "the future of the territory is a matter for resolution by Portugal and the Timorese people themselves, with Indonesia also occupying an important place because of its predominant interest".

In the first week of November, the Indonesian Foreign Minister met with his Portuguese counterpart in Rome and they issued jointly a 'memorandum of understanding'. This noted that Portugal represented the legitimate authority in East Timor and was responsible for its decolonisation. The two Ministers agreed on the need to hold a meeting of all political parties of East Timor with a view to ending the fighting.

On 28 November, Fretilin declared East Timor an independent 'Democratic Republic' and announced that some fifty Afro-Asian countries had pledged support to the new republic. On 1 December, Mozambique announced its recognition of East Timor under Fretilin.

The Portuguese government rejected Fretilin's declaration as well as a statement made on 29 November by UDT, Apodeti and two other parties which said that Fretilin's action had removed the last remains of Portuguese sovereignty and declared East Timor to be part of the Indonesian territory. On the next day, 30 November, Portuguese representatives at the United Nations formally requested the UN to help settle the East Timor question.

On 7 December, Indonesia made a full-scale invasion of East Timor, seized the capital, Dili, and drove the Fretilin supporters to the hills. The Portuguese government reacted by breaking diplomatic relations with Indonesia and said it would seek the help of the UN to put an end to Indonesia's military intervention. On the other hand, Indonesia reacted by stating that Portugal's sovereignty had ended on 28 November when Fretilin declared independence.

On 11 December, the UN Trusteeship Committee called on Indonesia to withdraw and urged it to desist from 'further violation' of East Timor's territorial integrity. The next day the General Assembly, in a resolution passed by 72 votes to 10 with 43 abstentions, called on Indonesia to withdraw from East Timor to enable the people to decide their own future and condemned the military intervention.

According to some sources, by the end

of December there were nearly 20,000 Indonesian soldiers in East Timor and reports were smuggled out of the territory indicating that the Indonesian troops were involved in systematic killing of Fretilin supporters including civilians. According to some reports, nearly 10,000 people were alleged to have been killed within the first few weeks of the invasion.

Meanwhile, with the help of the Indonesian authorities, the leaders of the UDT, Apodeti and two other smaller parties established a 'Provisional Government of East Timor' (PGET). In February 1976, the PGET announced that all political parties had 'dissolved themselves' and a new unified party had been created. Another PGET statement said that a 'People's Assembly' had been set up by 'consensus and consent', implying that the members were chosen and not elected. On 31 May, the newly convened People's Representative Council of East Timor approved a petition to integrate with Indonesia. The Indonesian government, on 29 June, announced its official acceptance of the merger and a bill legalising the annexation of the territory was passed by the Indonesian Parliament on 15 July.

Two questions that arise in relation to the invasion by Indonesia and the subsequent annexation of East Timor are whether the armed intervention made by Indonesia was justified in law and whether the people of East Timor participated in a genuine act of self-determination.

Indonesia has argued that basically its interest in the territory of East Timor arises out of the geographic, historic, ethnic and cultural ties which makes East Timor an integral part of the Indonesian archipelago. Further, it has also stated that independence for East Timor was unrealistic in view of the economic backwardness of the territory.

The latter point is not an acceptable justification for denying the people their right to self-determination. Paragraph 3 of the UN Declaration on the Granting of Independence to Colonial Countries and Peoples, states that: "Inadequacy of political, economic, social or educational preparedness should never serve as a pretext for delaying independence."

As for the cultural ties, the East Timorese generally speaking may belong to the South-East Asian family of cultures but there are doubts as to their direct link with the Indonesian culture. According to Professor Shepherd Forman[1], a leading authority on the anthropology of East Timor, "It manifests an ethnic heterogeneity which characterises the entire region from the Philippines to Australia and from the islands east of Papua New Guinea to the Malagasy Republic". He has also noted that it "... did not come under the aegis of the early Javanese/Islamic principalities and, historical conjecture notwithstanding, Indo-Javanese and Islamic influences barely can be noted, except insofar as Dutch hegemony later effected the spread of some ideas, particularly in the political domain, to Western Timor. East Timor, under Portuguese rule was largely exempt from those influences".

Even if one accepts the argument of the Indonesian authorities and looks for factors that unite both cultures and people, integration between them cannot legitimately be imposed by force.

The Indonesian government seeks to justify its armed intervention by saying that it had a moral responsibility to guarantee the peaceful decolonisation of East Timor and the internal strife endangered national security and the stability of the South-East Asian region.

1) Quoted in *Timor – A People Betrayed*, by James Dunn, the Jacaranda Press, p. 3.

In answer to this it may be said that Indonesia's moral responsibility was to 'promote the realisation of the right of self-determination' in accordance with the provisions of the charter. These provisions state that, 'members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state'.

Indonesia claims that "from the outset... it firmly supported the free and democratic exercise of the right to self-determination by the people of East Timor in accordance with... the Charter of the United Nations and resolution 1514 (XV) and 1541 (XV) of the General Assembly"[2]. The latter resolution specifies the conditions for a valid act of self-determination resulting in integration with an independent state in these terms:

"(a) The integrating territory should have attained an advanced state of self-government with free political institutions, so that its peoples would have the capacity to make a responsible choice through informed and democratic processes;

"(b) The integration should be the result of the freely expressed wishes of the Territory's peoples acting with full knowledge of the change in their status, their wishes having been expressed through informed and democratic processes impartially conducted and based on universal adult suffrage. The United Nations could, when it deems it necessary, supervise these processes."

Never before nor since the Indonesian annexation of East Timor have there been any "informed and democratic processes impartially conducted and based on universal suffrage", and neither the parties which declared on 29 November 1975 that East Timor was part of Indonesian territory, nor the 'People's Representative Council' which approved it in May 1976 were appointed by any such democratic processes.

As for the threat to the security of Indonesia and the region, it is difficult to understand how a small territory in the midst of civil strife could have been a threat to Indonesia which has a considerable military strength.

Indonesia also claimed that it intervened for humanitarian reasons at the request of the UDT, Apodeti and two other parties, which wanted Indonesia to put an end to the civil strife. The doctrine of humanitarian intervention is not recognised by the UN Charter and is generally considered by international lawyers to be now outdated. In any event, as was said in ICJ Review No. 8 of June 1972 on the Indonesian invasion of East Pakistan, "... unilateral action is likely to be arbitrary and to lack the disinterested character which humanitarian intervention should possess". Moreover, when Indonesia intervened the matter was already before the UN and the Indonesian intervention by no means stopped the bloodbath. The killings continued with the Indonesian forces themselves taking part.

As to the present state of opinion in East Timor, it is impossible to obtain any realiable and independent account of it as Indonesia refuses to permit independent observers to visit the territory to assess the situation. This ban applies even to Indonesian citizens who are equally in the dark about events there.

Such reports as have come out of East Timor indicate a degree of repression which suggests that the government has little popular support. These include reports of systematic use of torture, arbitrary killings and

2) *Decolonisation – East Timor*, Indonesian Department of Foreign Affairs, p. 42.

disappearances. Amnesty International has published extracts from a handbook of military interrogators on the case of torture practices. In 1983 the ICRC suspended its activities in the territory following the refusal of the Indonesian authorities to grant ICRC delegates access to all villages requiring assistance. As long as these reports of massive violations of human rights continue and as long as access to East Timor by visitors is severely restricted, it will be difficult for the Indonesian government to convince the international community that the people of East Timor have freely accepted integration with Indonesia.

Haiti

The Republic of Haiti (27,750 km^2) occupies a third of the island of Haiti, of which the other two-thirds are the territory of the Dominican Republic. The border between the two States was determined under a Treaty of 1929, supplemented by another of 1935. In addition to the main island, there are various neighbouring islands, one of which is La Tortuga, famous in literature for having been the base and refuge of Caribbean pirates. The population of Haiti amounts of some 6 million inhabitants.

Haiti is the first example of a successful rebellion of black slaves against their white masters and against the colonial authorities. As a result of the rebellion, France, which had replaced Spain as the colonial power, proclaimed in 1793 the liberation of all slaves in the colony. Having tasted freedom, the struggle was renewed for independence of the people. Eventually, a general insurrection overcame the French troops and Haiti's independence was proclaimed on 1 January 1804. Haiti thus became one of the first countries on the American continent to obtain its freedom.

In 1957, another period began in Haiti's history, that of 'Duvalierism', when a physician, Dr. François Duvalier, later known as 'Papa Doc', was elected President. It took Duvalier two years to establish an absolutist and dictatorial régime. Then, having gathered all power into his hands, he unleashed a savage campaign of political repression against all who opposed him. He made persecution and terror his mode of government. Human rights and fundamental freedoms were violated and ignored, and a climate of general insecurity was generated for the people. His government was based on repressive groups of supporters, mainly a body of militia called the Volunteers for National Security and better known as the 'Tontons Macoutes'. He placed his political followers in key government posts, controlled the economy and deprived the legislative and judicial branches of all real power. By a constitutional amendment of June 1964, he was designated President for Life (art. 99 of the Constitution), in replacing the article which provided for the election of the President by popular vote for a term of six years.

In 1971 he had further amendments made to the Constitution enabling his régime to continue even after his death. Article 99 of the Constitution confirmed his designation as President for Life, enumerated in 12 paragraphs his "merits", listed his numerous honorific titles and stressed the need for the *République Duvaliériste* (sic) to continue. In article 100, he was empowered to designate his successor, who was also to be President for Life (article 104). The successor designated by Papa Doc was his son, Jean-Claude Duvalier.

One obstacle still remained to be surmounted: this was that under the 1963 Constitution the minimum age for the office of President was 40 years whereas his son Jean-Claude was then only 18 years old. Accordingly, article 91 was amended in 1971 to lower the minimum age to 18 years. For the sake of consistency, the minimum age for election as a Deputy of the Legislative Chamber was also reduced to 18 years (art. 50).

In April 1971, François Duvalier died, and his son became President for Life. On 27 August 1983, the Constitution was again amended, in the space of one week, confirming the Life Presidency of Jean-Claude Duvalier and empowering him to designate his successor, although this time not necessarily a member of his family, and reinforcing the control of the State by the Executive (arts. 107, 108 and 109).

Constitutional framework

Haiti is a party to the following, among other, international instruments relating to human rights:

- the Universal Declaration of Human Rights;
- the American Convention on Human Rights of 1969;
- the International Labour Organisation's Conventions, No. 87 of 1948 concerning Freedom of Association and Protection of the Right to Organise, No. 98 of 1949 concerning the Right to Organise and to Bargain Collectively, No. 105 of 1957, concerning the Abolition of Forced Labour, and No. 111 of 1958 concerning Discrimination in respect of Employment and Occupation;
- the Convention on the Elimination of Racial Discrimination of 1965;
- the Convention on the Prevention and Punishment of the Crime of Genocide, of 1948; and
- the Convention for the Abolition of Slavery of 1956.

Haiti is not, however, a party to the International Covenants on Civil and Political Rights, and on Economic, Social and Cultural Rights of 1966.

At the national level, the rights and duties of citizens were laid down in some thirty articles of the Constitution, as well as in laws and regulations. A large number of these rights exist only on paper.

Under the Constitution of August 1983, the administration of the State purports to be based on the three powers – the Executive, Legislative and Judicial. These are supposed to act independently and may not delegate the functions entrusted to them by the Constitution.

Executive power

This is exercised by the President for Life, although the national Constitution establishes that "National sovereignty is an attribute of all citizens. The people shall exercise the prerogatives of sovereignty directly, through 1) the election of the President of the Republic...". In practice, Haitians have not been able to take part in the election of the President during the last 20 years. The institution of a Life Presidency is incompatible with the exercise of this political right.